

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DELBERT MEYER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 83-13

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from Department of Ecology Order No. DE 83-112 came on for hearing before the Pollution Control Hearings Board, Lawrence J. Faulk (presiding), Gayle Rothrock, and Wick Dufford, at a formal hearing in Spokane, Washington, on March 6, 1985.

Appellant appeared by his attorney Robert F. Patrick; respondent appeared by Charles W. Lean, Assistant Attorney General. Reporter Denise Micka recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Appellant Delbert Meyer owns a swine raising operation in Colton, Washington. Appellant Meyer has continuously operated the swine raising operation since the early 1970's. The operation has on hand, approximately 1,500 head of swine, on the average.

II

Respondent Department of Ecology (DOE) is a State agency charged with the administration and enforcement of chapter 90.48 RCW.

III

The subject swine raising operation is located next to an unnamed stream which is tributary to Union Flat Creek in Whitman County Washington. Appellant Delbert Meyer has constructed a number of pollution control facilities to control the discharge swine manure and urine from his operation. These facilities consist of berms and a primary anaerobic holding lagoon which when it is full overflows into a little draw that has a natural intermittent stream at the bottom.

IV

From this point of discharge the little stream shortly joins up with a similar, though larger stream which then travels through a highway culvert, and travels (at least part way through ditches) about one quarter mile to Union Flat Creek.

The waters draining into Union Flat Creek through this system are as much as waters of the state as those of the larger creek itself.

V

On September 20, 1982, an inspection at the Del Meyer swine farm in Colton, Washington, revealed that lagooned animal waste was being discharged into the drainage which is tributary to Union Flat Creek. It is undisputed that this has occurred on a number of occasions and continues to occur when the lagoon overfills.

VI

On January 14, 1983, DOE issued Order No. DE 83-112. This Order provided that:

1. Immediately cease any further discharges to drainage leading to Union Flat Creek.
2. Submit to the Department of Ecology Eastern Regional Office (ERO) for review and approval, prior to March 1, 1983, plans for an interim system of liquid wastewater containment and/or disposal.
3. Submit to the ERO for review and approval, prior to September 30, 1983, plans and specifications for a permanent water management facility/system.
4. All submittals to the department shall be prepared by a Professional Engineer registered in the State of Washington.
5. A permanent waste management facility/system shall be in service prior to September 30, 1985.

VII

Feeling aggrieved by this order appellant appealed to this Board on February 14, 1983.

VIII

Due to a series of schedule changes by the Board and settlement negotiations by the parties, which ultimately failed but did consume a

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1 considerable amount of time, this case did not come to hearing until
2 March of 1985.

3 IX

4 No tests prove that wastes discharged by appellant's operations
5 pollute Union Flat Creek. Dilution makes most pollutant indications
6 from such waste undetectable in the main creek. Any pathogens,
7 however, would not be affected by dilution.

8 As to the waters of the drainage leading to the creek, the
9 situation is different. The presence of waste manure in quantities
10 sufficient to discolor the water has been observed there.

11 X

12 Liquid pig manure, such as that periodically discharged by
13 appellant's operation, tends to render waters harmful, both because of
14 its effect on dissolved oxygen levels and because of its potential
15 pathogenic properties.

16 XI

17 Appellant's operation is a modern and up-to-date facility as far
18 as the swine raising aspects of the business are concerned. His
19 pollution control facilities, however, do not have sufficient
20 capacity, and do not represent "the state of the art" which is known,
21 available and reasonable within the industry.

22 Under existing technology a "no discharge" system could be
23 installed at reasonable cost. This would probably involve land
24 disposal of excess liquid manure through a sprinkling system.

XII

Testimony and exhibits proved that appellant is suffering financial hardship because of a series of events unrelated to his pollution control system, including adverse market conditions over which he has no control.

In addition to swine, he also raises wheat on his farm. It was not shown that the Order at issue would, in itself, result in a conversion of the farm to nonagricultural uses. The Department of Ecology did consider whether its Order would contribute to such a conversion before it was issued.

XIII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The waters of the unnamed ditch are waters of the State. RCW 90.48.020.

II

RCW 90.48.020 states:

...Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the wates, or such discharge of any liquid, gaseous, solid radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the

1 public health, safety or welfare, or to domestic,
2 commercial, industrial, agricultural, recreational,
3 or other legitimate beneficial uses, or to livestock,
wild animals, birds, fish or other aquatic life...
(emphasis added).

4 III

5 RCW 90.48.080 states:

6 It shall be unlawful for any person to throw, drain,
7 run, or otherwise discharge into any of the waters of
this state, or to cause, permit or suffer to be
8 thrown, run, drained, allowed to seep or otherwise
discharged into such waters any organic or inorganic
9 matter that shall cause or tend to cause pollution of
such waters according to the determination of the
10 [DOE], as provided in this chapter. (Emphasis added).

11 IV

12 RCW 90.48.120 authorizes the issuance of an order:

13 [W]henever, in the opinion of the department any
14 person shall violate or is about to violate the
provisions of this chapter, or fails to control the
15 polluting content of waste discharged or to be
discharged into any waters of the state . . .
16 (Emphasis added).

17 V

18 We conclude that the discharge of organic matter (liquid pig
19 manure) from appellant's lagoon violates RCW 90.48.080 in that it
20 tends to cause pollution as that term is defined in RCW 90.48.020.
21 Accordingly, Department of Ecology was justified under RCW 90.48.120
22 in issuing an order for failure to control the polluting content of
23 water discharged into waters of the state.

24 VI

25 RCW 90.52.040 states:

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1 In the administration of the provisions of chapter
2 90.48 RCW, the director of the department of
3 ecology shall, regardless of the quality of the
4 water of the state to which wastes are discharged
5 or prepared for discharge, and regardless of the
6 minimum water quality standards established by the
7 director for said waters, require wastes to be
8 provided with all known, available and reasonable
9 methods of treatment prior to their discharge or
10 entry into the wastes of the state. (Emphasis
11 added).

12 VII

13 We conclude that the level of treatment presently provided at
14 appellant's farm does not measure up to the statutory standard. We
15 further conclude that the content of Department of Ecology's order, in
16 effect calling for a "no discharge" system, is under the facts, within
17 the mandate of RCW 90.52.040.

18 VIII

19 Because of the time consumed by negotiations of the parties and by
20 this appeal, the time frames in Department of Ecology's Order (DE No.
21 83-112) should be adjusted to allow appellant a reasonable period
22 within which to complete the planning and construction phases of the
23 required project.

24 IX

25 Appellant's arguments regarding the applicability of federal
26 regulations are not relevant in this state regulatory context.

27 X

Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

From these Conclusions the Board enters this

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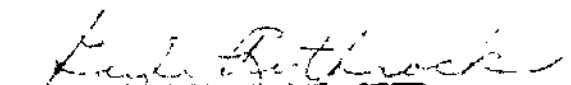
ORDER

Subject to adjustment pursuant to Conclusion of Law VIII above,
Department of Ecology Order No. 83-112 is affirmed.

DATED this 3rd day of May, 1985.

POLLUTION CONTROL HEARINGS BOARD

 5/3/85
LAWRENCE J. FAULK, Chairman


GAYLE ROTHROCK, Vice Chairman


WICK DUFFORD, Lawyer Member

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